

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PATRICIA McENTEE, CHRISTINE
GEARIN, JULIA CARLSON, MICHELLE
PROVITOLA, JULIE DiGIROLAMO,
DOROTHY CLARKE, JEANNE
ARSENAULT, STACEY BARNES,
MARCO BUZZANGA, DONNA CIULLA,
JENNIFER JASILEWICZ, LAUREN
MELLO, ERIKA CARDINALE, JENNIFER
CORDY, LAUREN HETRICK, MARIAM
MOMJIAN, PATRICIA MURPHY,
RACHEL SOUCIA, FELICIA DELA CRUZ,
ANGELA CHANDLER, MARY DICKENS,
DESIREE LETELLIER, MARY
O'CONNOR, BROOK GROMYKO,
MIRLENE LUCAS, and AMY DURETTE,

Plaintiffs,

v.

Civil Action No. 1:22-cv-11952

BETH ISRAEL LAHEY HEALTH, INC.,
BETH ISRAEL DEACONESS HOSPITAL-
PLYMOUTH, INC., NORTHEAST
HOSPITAL CORPORATION, BETH
ISRAEL DEACONESS MEDICAL
CENTER, INC., WINCHESTER
HOSPITAL, BETH ISRAEL LAHEY
HEALTH PRIMARY CARE, INC., MOUNT
AUBURN HOSPITAL, and NORTHEAST
PROFESSIONAL REGISTRY OF NURSES,
INC.,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.1(b)(1), all of the
above-named Defendants ("Defendants") hereby move to dismiss Counts I through III of the

First Amended Complaint (ECF Nos. 4 and 9-1) (the “Amended Complaint.”) for failure to state a claim.

As is detailed in Defendants’ accompanying Memorandum of Law in Support of Motion to Dismiss, all of the above-named Plaintiffs (“Plaintiffs”) seek various forms of relief arising from the denial of Plaintiffs’ requests for religious exemptions from Defendants’ mandatory COVID-19 vaccine policy, including a claim of civil assault (Count I), violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution (Count II), and violation of substantive and procedural due process rights under the United States Constitution and Massachusetts Declaration of Rights (Count III).

First, Count I fails to state a claim for civil assault because Plaintiffs (1) have not alleged that Defendants intended to cause or threaten a harmful or offensive contact with Plaintiffs, (2) have not alleged that Defendants took any overt actions towards making harmful or offensive contact, or were even “reasonably close” to doing so, (3) have not alleged that a reasonable person would have recognized any of the alleged actions of Defendants as threatening conduct, or (4) have not presented any facts supporting their single, conclusory assertion that Plaintiffs had a fear or apprehension of imminent harmful or offensive contact from Defendants.

Second, Counts II and III should be dismissed because there are no freestanding claims for alleged constitutional violations recognized under federal or Massachusetts law. Even assuming Plaintiffs brought a proper claim for deprivation of constitutional rights, Counts II and III should still be dismissed because there are no allegations that Defendants were acting under color of state law in adopting their COVID-19 vaccine policy or that Defendants deprived Plaintiffs of any secured, fundamental rights.

For these reasons, and those set forth more fully in the accompanying Memorandum of Law, Defendants request that this Court request their Motion to Dismiss and dismiss with prejudice Counts I through III of the First Amended Complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants believe that oral argument may assist the Court in deciding this motion and thus request oral argument.

Respectfully submitted,

BETH ISRAEL LAHEY HEALTH, INC.,
BETH ISRAEL DEACONESS HOSPITAL-
PLYMOUTH, INC., NORTHEAST
HOSPITAL CORPORATION, BETH
ISRAEL DEACONESS MEDICAL
CENTER, INC., WINCHESTER
HOSPITAL, BETH ISRAEL LAHEY
HEALTH PRIMARY CARE, INC.,
MOUNT AUBURN HOSPITAL, and
NORTHEAST PROFESSIONAL
REGISTRY OF NURSES, INC.

By their attorneys,

Dated: April 24, 2023

/s/ Scott A. Roberts
Scott A. Roberts (BBO No. 550732)
sroberts@hrwlawyers.com
Hirsch Roberts Weinstein LLP
24 Federal Street, 12th Floor
Boston, MA 02110
(617) 348-4300

* * * * *

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel hereby certifies that counsel for Defendants has conferred with counsel for Plaintiff and attempted in good faith to resolve or narrow the issues presented in this motion.

/s/ Scott A. Roberts

Scott A. Roberts

* * * * *

CERTIFICATE OF SERVICE

I, Scott A. Roberts, hereby certify that on April 24, 2023, I electronically filed the foregoing document with the United States District Court for the District of Massachusetts by using the CM/ECF System. I certify that all of the plaintiffs or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system.

Dated: April 24, 2023

/s/ Scott A. Roberts

Scott A. Roberts

* * * * *